

## REMARKS

With entry of the amendment, claims 51-58 and 61 are pending, and claims 51 and 53 are amended. Claim 51 is amended to clarify that detecting the presence of the target nucleic acid sequence in the sample is by an increase in fluorescence from reduction of fluorescence resonance energy transfer to the quencher or from reduction of ground state quenching by the quencher upon hybridization of the oligonucleotide to the target nucleic acid sequence, or upon hybridization of the oligonucleotide to the target sequence and subsequent cleavage of the oligonucleotide. Claim 53 is amended to clarify that the  $\alpha$ -aminoanthraquinone is non-fluorescent. The amendments are fully supported by the specification and introduce no new matter.

Applicants wish to thank Examiner Staples for initiating a telephonic interview with the undersigned on January 4, 2009 and for participating in a telephonic interview with Dr. Joseph Walder to discuss claim language to more clearly define the invention.

Additionally, Applicants discussed with Examiner Staples the effective date of a reference entitled "Synthesis of a novel dark quencher for use with long wavelength dyes in oligonucleotide probes" by May et al., Innovation and Perspectives in Solid Phase Synthesis and Combinatorial Libraries: Peptides, Proteins and Nucleic Acids Small Molecule Organic Chemical Diversity, Collected Papers, 7<sup>th</sup> International Symposium, Southampton, UK ("the May reference").

Applicants submitted the May reference with an Information Disclosure Statement filed September 13, 2007, after the May reference was cited in a European Search Report dated August 22, 2007. In reliance on the European Search Report, Applicants mistakenly indicated on the Information Disclosure Statement that the May reference published September 18-22, 2002. However, Roger Epton, director of Mayflower Worldwide Limited and Editor of the publication in which the May reference appeared, subsequently informed Applicants that the May reference first published on March 12, 2003.


The European Examination Report stated that the publication of the May reference in Innovation and Perspectives in Solid Phase Synthesis and Combinatorial Libraries represents an oral presentation that was allegedly made at the 7<sup>th</sup> International Symposium, which took place September 18-22, 2001 in the UK (See March 6, 2008 Examination Report at Section IV.1). In fact, the 'Final' Lecture Programme and Timetable, which was obtained at

<http://www.mayflower.demon.co.uk/sps2001.htm>, provides no indication that any of the authors of the May reference presented on novel dark quenchers at the 7<sup>th</sup> International Symposium (See attached Exhibit A). Even if one were to assume that information described in the May reference was orally presented at the 7<sup>th</sup> International Symposium, such presentation does not constitute prior art under 35 USC 102(b). Furthermore, the preface to Innovation and Perspectives in Solid Phase Synthesis states that submission of a manuscript for the proceedings volume was not a condition for presenting work at the symposium and that most of the manuscripts were prepared after the symposium. (See Preface to Innovation and Perspectives in Solid Phase Synthesis, 3<sup>rd</sup> paragraph, attached Exhibit B).

As the present application is in condition for allowance, favorable reconsideration of the application is respectfully requested. Should any questions remain, the Examiner is encouraged to contact the undersigned at **608.257.3501** so that prompt disposition of the application may be achieved.

No fee is believed due in connection with this submission. However, the Commissioner is authorized to charge any other fee which may be required to Deposit Account No. **50-0842**.

Respectfully submitted,

  
Jill A. Fahrlander  
Reg. No. 42,518

File No. 013670-9004-US00  
Michael Best & Friedrich LLP  
One South Pinckney Street  
P. O. Box 1806  
Madison, WI 53701-1806  
608.257.3501

Q:\CLIENT\013670\9004\B2151488.1